

CHILDHOOD VULNERABILITIES

in South Africa

Some Ethical Perspectives



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CHAPTER 3

THE CONTENTIOUS ISSUE OF CORPORAL PUNISHMENT IN SOUTH AFRICA

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*If a child can't read ... we teach,
If a child can't spell ... we teach,
If a child can't swim ... we teach,
When a child can't behave ... we punish*

Greg Jansen and Rich Matta

INTRODUCTION

This chapter will focus on how children should be treated and raised in a culture where the distinctions between discipline and punishment have been blurred for decades. Why should a rights conception of discipline matter? The chapter will navigate these and other issues when it comes to disciplining children in a democratic, but often violent society. It will firstly attend to the legal framework for discipline in South Africa, especially regarding school discipline. Then it will describe the current situation in South Africa and also look at recent developments regarding corporal punishment and the continuing struggle against violence that children experience and are exposed to on a daily basis. Lastly, positive alternative ways of disciplining children in order to behave better and how people responsible for children can be assisted in this regard, will be addressed.

LEGAL FRAMEWORK REGARDING DISCIPLINE AND CORPORAL PUNISHMENT

In any discussion of the contentious issue of discipline and the use of corporal punishment regarding children in South Africa, it is important to take the legal framework and current legal position regarding discipline into consideration (Reyneke 2013:123). In this regard, the first question to ask is: How is corporal punishment officially defined in South Africa? The South African Department of Education (Department of Education 2000) defines corporal punishment as:

[A]ny deliberate act against a child that inflicts pain or physical discomfort to punish or contain him/her. This includes, but is not limited to, spanking, slapping, pinching, paddling or hitting a child with a hand or with an object; denying or restricting a child's use of the toilet; denying meals, drink, heat and shelter,

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pushing or pulling a child with force, forcing the child to do exercise. (p. 6)

This formulation should be read against the legal background of the Constitution of the Republic of South Africa [Act 108 of 1996]. Chapter 2 of the Constitution, under the heading Bill of Rights, states in Section 7 points 1 and 2 the following (Republic of South Africa 1996a):

(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

Furthermore, it declares in Section 10 about human dignity: “Everyone has inherent dignity and the right to have their dignity respected and protected” (Republic of South Africa 1996a).

Reyneke (2013) interprets the provisions in Section 7 (2) as follows:

To “respect rights” means that the state has an obligation not to violate rights or to limit rights unlawfully. In the context of school discipline, this would mean that the state, organs of state and employees of the state should not infringe on the rights of learners and others, such as educators. To “protect rights”, on the other hand, requires the state to prevent the violation of rights; hence measures such as legislative provisions must be put in place to prevent the infringement of rights. To “promote and fulfil rights” means that the state must take active steps to make it possible to exercise rights and to prevent the infringement of rights. This implies that the state must put measures in place to

ensure that, while discipline is maintained, rights are promoted and fulfilled. (p. 125)

Moreover, Section 28 1(d) states: “every child has the right to be protected from maltreatment, neglect, abuse or degradation” (Republic of South Africa 1996a).

Reyneke (2013:128), opined that the Bill of Rights (Republic of South Africa 1996a) provides in section 28(2) the benchmark for school discipline:

A child’s best interests are of paramount importance in every matter concerning the child.

The implication of the above-mentioned sections of the Constitution is that teachers have to respect the human rights of learners and, therefore, may not use corporal punishment under any circumstances. It also obliges state organs to take steps to prohibit corporal punishment and to ensure that it is not used (Reyneke 2013:126).

In 1995, in *S v Williams*, juvenile whipping was found to be unconstitutional because it contravenes the human dignity of the offender, and the punishment was described as inhuman and degrading (Reyneke 2013:160). This precedent was followed by accepting the *National Education Policy Act* of 1996 which outlawed corporal punishment in schools (:160). Section 3(4) provides as follows:

[N]o person shall administer corporal punishment or subject a student to psychological or physical abuse at any educational institution. (p. 6)

In response, the *South African Schools Act* of 1996 (Republic of South Africa 1996b) provided in Section 10 the following:

(1) No person may administer corporal punishment at a school to a learner.

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(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

It was followed up with the *Abolition of Corporal Punishment Act* 33 of 1997 (Republic of South Africa 1997) that repealed all laws which authorised corporal punishment by a court of law, including a court of traditional leaders. Hereby corporal punishment was banned in South Africa.

But the efforts to create a culture of non-violent school discipline was not accepted and supported in all quarters. Christian Education SA, a voluntary association of 196 independent Christian schools, took the Minister of Education to court (cf. *Christian Education SA v Minister of Education* 2000 (4) SA 757 (CC)) in a bid to make an exception to the prohibiting of corporal punishment on grounds of religious conviction. They declared that

its member schools maintain an active Christian ethos and seek to provide to their learners an environment that is in keeping with their Christian faith. They aver that corporal correction – the term they use for corporal punishment – is an integral part of this ethos and that the blanket prohibition of its use in its schools invades their individual, parental and community rights freely to practise their religion. (p. 2)

The judge of The South-Eastern Cape Local Division of the High Court found that

section 10 of the Schools Act did not constitute a substantial burden on religious freedom. He also held that corporal punishment in schools infringed the children's right to dignity and security of the person and was accordingly not protected by section 31 of the Constitution. He therefore dismissed the application. (p. 7)

What is very interesting of this judgement, is that the Judge found that “the scriptures relied on provided ‘guidelines’ to parents on the use of the rod, but did not sanction the delegation of that authority to teachers” (*Christian Education SA v Minister of Education* 2000 (4) SA 757 (CC):5). He also expressed the view that “the authority to delegate to teachers was derived from the common law and the approach adopted by the appellant was merely ‘to clothe rules of the common law in religious attire’” (:5). He then declared that “in the circumstances it had not been established that administering corporal punishment at schools formed part of religious belief” (:5). A careful reading of Proverbs established that the Judge was technically correct in his observation that the scriptures used said nothing about the delegation of authority to use the rod from the parents to teachers.

The association then took the judgement on appeal to the Constitutional Court which found the following (*Christian Education SA v Minister of Education* 2000 (4) SA 757 (CC)):

When all ... factors are weighed together, the scales come down firmly in favour of upholding the generality of the law in the face of the appellant’s claim for a constitutionally compelled exemption. The appeal is accordingly dismissed. (p. 57)

Reyneke (2013) summarised the factors for this verdict as follows:

although the restriction on corporal punishment was not in line with the religious beliefs of the parents concerned, the court still had a duty to promote respect for the dignity and physical and emotional integrity of all children; that language, culture and religion cannot shield practices that are unconstitutional; that an exemption, even on religious grounds, would not be in line with the equality clause; that upholding corporal punishment would disturb the symbolic, moral and pedagogical purpose of the prohibitive measure and would undermine the state’s duty to protect people from violence.

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The prohibition of corporal punishment, stated the court, is designed to transform national civic consciousness in a major way. In this regard, it held that the broad community has an interest in reducing violence wherever possible and in taking active steps to protect children from harm.

In addition, it considered the best interests of the child to be of paramount importance. Parents' religious beliefs, it said, could not limit children's best interests, and, if parents' beliefs are not in the child's best interests, the child should be protected, even if this means infringing the parents' religious beliefs. (pp. 161-162)

In the light of this legislative situation, how does the current situation regarding corporal punishment look in South Africa?

THE CURRENT SITUATION

Although corporal punishment in schools has been banned in South Africa, Angie Motshegka (Joubert 2019:n.p.), the Minister of Basic Education, is of the opinion that it is still being used unlawfully by teachers. This is confirmed by the Committee on the Rights of the Child¹ as well as other human rights treaty bodies such as the Human Rights Committee (Global initiative to end all corporal punishment of children 2019a:4-5).

In the 2016-2017 financial year, according to Motshegka (:n.p.), 229 letters of advice were sent to teachers who were convicted of corporal punishment. In 2017-2018, it increased to 233 but in 2018-2019 dropped to 194 (:n.p.). The fact that some teachers continue to inflict corporal punishment even after receiving advisory letters as a warning, became clear from the fact that the South African Council of Educators (SACE) – which is the country's watchdog for acceptable

1 27 October 2016, CRC/C/ZAF/CO/2, Concluding observations on second report, paragraphs 35 and 36.

teaching practices and with whom all teachers must be registered if they want to teach in 2016-2017, found seven teachers guilty of inflicting corporal punishment (:n.p.). In 2017-2018, 24 teachers were found guilty in a disciplinary process, and in 2018-2019, the number increased to 33. The penalties imposed by SACE varied. Some teachers' names have been deleted from the roll. This only happened in cases where pupils were seriously injured by the teacher. Some of the other guilty teachers' punishment was that the deletion of their names from the roll was suspended on condition that they were not convicted of corporal punishment again (:n.p.).

If one goes further back to a social audit of school safety and sanitation that was conducted in the Western Cape (one of the nine South African provinces) during September-November 2015, involving 912 learner questionnaires, 220 administrator interviews, and 229 physical inspections, the audit (Global initiative to end all corporal punishment of children 2019a; Equal Education 2016) found

[t]hat despite a ban on corporal punishment in South African schools, learners [were] beaten at 83% of schools sampled. Learners [reported] that it [occurred] daily in 37% of schools and at least once a week in 59% of schools. Of the learners sampled, 64% have personally been abused or seen a fellow learner abused by a teacher weekly, and 39% [experienced] or [witnessed] corporal punishment daily. (p. 8; n.p.)

In some of the schools where corporal punishment occurred, learners reported "teachers using a weapon (stick, baton, pipe, etc.) to abuse them in 91% of these schools. The most common means of assault by teachers on children in their charge [was] with a ruler or other small stick (75%), their open hand or fist (61%), or a pipe (44%)" (Global initiative to end all corporal punishment of children 2019a:8).

In a qualitative study done by Marumo and Zulu (2019) in Mahikeng Township secondary schools of the North-West province

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on teachers' and learners' perceptions of alternatives to corporal punishment, they found:

Although some teachers and learners felt that alternative forms of discipline were effective to a certain extent, the general perception was one of scepticism. Both teachers and learners expressed the need for a return to corporal punishment in cases of serious misconduct. (p. 46)

The reality described above raises the question: Why does corporal punishment, despite its banning as unlawful, persists in some schools? Morrell (2001) already partially answered this question by stating:

Reasons for the persistent and illegal use of corporal punishment include the absence of alternatives, the legacy of authoritarian education practices and the belief that corporal punishment is necessary for orderly education to take place. A neglected explanation is that corporal punishment persists because parents use it in the home and support its use in school. There is a tension between the prohibition of corporal punishment in schools and the increase in parent involvement in the affairs of schools. (p. 292)

Although more attention was given to identifying alternative discipline methods since the publication of Morrell's article, it seems that it does not make much of a difference. In Marumo and Zulu's (2019:46) research, teachers indicated that their negative perceptions can be attributed "to a lack of adequate training in the implementation of alternative forms of discipline." Morrell (2001:292) also expresses the opinion that there exists, amongst teachers, parents and pupils, many different local understandings concerning discipline and corporal punishment. In a qualitative case study among high schools in Pretoria East, South Africa, Joubert and Serakwane (2009:127) draw the conclusion that the educators in these schools viewed discipline

differently, stating: “Some perceived it as the formation of moral character, some perceived it as control over learners, some perceived it as preventive and corrective measure, some as self-discipline, whereas some understand it more narrowly as punishment.”

It seems that about 20 years after Morrell’s article appeared, some of these same complicating factors still exist, as will come to the fore in the discussion in the next section on another case before the Constitutional Court of South Africa in 2019.

Another possible reason for the struggle to change the culture surrounding corporal punishment in South Africa come to the fore in Reyneke’s (cf. 2013, 2014, 2016, with Pretorius 2017) research, emphasising the importance of the best-interest-of-the-child concept as a right and guiding principle for discipline in schools. Although the Constitution clearly pronounces that in every matter regarding children, their best interests should be predominant, and the Constitutional Court has already delivered various judgements concerning this concept (cf. Reyneke 2014), it is still not incorporated in the stipulations concerning school discipline (Reyneke 2016:1). After scrutinising section 8 of the School Act, Reyneke and Pretorius (2017:112; cf. 2017:118-123) concluded that from “the lack of prescriptions ensuring that sanctions serve the best interest of children, the insufficient provision for support measures and structures for counselling, the undue focus on the best interests of the transgressor and the lack of guidance concerning the appointment of an intermediary”, it is evident that the approach followed and the disciplinary processes is incompatible with the right of the best-interests-of-the-child. In spite of “the fact that the Constitutional Court continuously directs decision makers, in different contexts, to focus on the best interest of children” and “also provides guidance on how the best interests of the child should be considered” it repeatedly happens that “decision makers fail to heed this call of the Constitutional Court and consequently infringe on children’s best-interests right” (Reyneke 2014:137).

As long as this situation endures, it will be difficult to establish the concept of the-best-interests-of-the-child as part of the South African culture regarding corporal punishment and the illegal use of

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corporal punishment will persist. Laws and even a stricter application thereof will not on its own stop the violence against children and their abuse through corporal punishment. This situation is a great ethical challenge for the Church in South Africa to establish a culture of human dignity towards children in the South African society and morally responsible conduct in disciplining children, not only in schools, but also in every child's home. This challenge is stressed by some recent developments concerning the use of corporal punishment towards children in South Africa.

RECENT DEVELOPMENTS REGARDING CORPORAL PUNISHMENT IN SOUTH AFRICA

On 18 September 2019, the Constitutional Court of South Africa ruled that the defence of “reasonable and moderate chastisement” was unconstitutional. This effectively means that all corporal punishment of children was banned. But what led to this prohibition? Adriaan Mostert, an IT specialist and his wife Hannah, unknowingly helped set this landmark order in the Constitutional Court. It all started with the charismatic Joshua Generation Church, which in 2013, posted a 38-page manual on its website of the thickness and length of the rod with which a parent should educate a one-year-old. In the *Raising Children* manual, that has since then been removed from their website, the church recommends that the stick with which a one-year old should be punished, should be 25-28 cm long and 3 mm thick. For an older child, the couple who wrote the manual, recommended a wooden or plastic stick of about three rulers in length. According to them, a hiding should cause pain otherwise it will be useless and will leave your child unchanged. When the Mostert couple saw this manual, they lodged a complaint at the Human Rights Commission asking them to prohibit the church from allowing their members to hurt their children. In 2016, the Human Rights Commission ruled against the Joshua Generation Church. The church's promotion of

corporal punishment at home was found to be unacceptable by the commission. The Joshua Generation Church appealed on procedural grounds and the Human Rights Commission undertook to review the report, which has not happened (Brümmer 2019:n.p.).

In 2016, a Muslim father, known as YG, was convicted in a Johannesburg regional court for assaulting his wife and 13-year-old son after the boy was caught watching pornography on the internet. This case was reviewed in the High Court, after which this court found that the defence of reasonable and moderate chastisement is unconstitutional. Freedom of Religion South Africa² (FOR SA), admitted as a friend of the court (*amicus curiae*), took it on appeal after which it was referred to the Constitutional Court. In September 2019, the Court decided that all forms of corporal punishment are unconstitutional (Brümmer 2019:n.p.). The implication is that corporal punishment in any form and at any place is prohibited in South Africa. Indeed, activism by ordinary citizens of a country, also in South Africa, can make a huge difference in the lives of people, especially children.

THE CONTINUING STRUGGLE AGAINST VIOLENCE IN THE LIVES OF CHILDREN

A further very important factor that led to the outlawing of all corporal punishment of children, has to do with the violence many of the 19 million children in South Africa (UNICEF 2015) are exposed to on a daily basis. For Shanaaz Mathews³, director of the Children's Institute⁴ at the University of Cape Town, positive parenting is not about being permissive, but about raising your children in such a way that they know what respect is, not only for others but also for themselves.

2 More information about this legal advocacy organisation working to protect and promote the constitutional right to religious freedom in South Africa is available at <https://forsa.org.za/>

3 <http://www.ci.uct.ac.za/shanaaz-mathews>.

4 <http://www.ci.uct.ac.za/>.

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Mathews (Brümmer 2019:n.p.; Mathews & Martin 2016:1160-1163), among others, conducted a national study on child murder, in which they found that more than 1 000 children are murdered annually – and half of these happen in the context of fatal child abuse. Even softer forms of chastisement make children feel as if they have no control over what is happening to them, because they don't know whether it is punishment or abuse. It is often just a grey area. The problem is that when you are angry as a parent, you do not always have control (Mathews in Brümmer 2019:n.p.). Earlier in her career, Mathews (in Brümmer 2019:n.p.) conducted a national epidemiological study on intimate femicide and found that a woman was killed by her intimate partner every six hours. And it has more to do with corporal punishment than one might think. Children who grow up with physical corporal punishment easily become aggressive and violent later in their lives. It made her understand how violence in the form of discipline has this incredible lasting effect on who we are and who we become as human beings.

A study called Birth to Twenty Plus [Bt20 +] (Brümmer 2019:n.p.; Richter et al. 2018:181-186), of which Mathews was part, revealed that half of the children received corporal punishment within the first five years of their lives. By the time they were 17 years old, about 70% of them had experienced some form of physical punishment or violence in their homes. “Birth to Twenty Plus is a unique birth cohort study which started enrolling pregnant women from Soweto, Johannesburg, in 1990 and has followed them and their children for more than 27 years” (Mathews 2018:n.p.). This study shows “the extent to which children are exposed to violence in their homes, at school, in their communities and in their intimate relationships with peers and the long-term effects of violence in their lives” (:n.p.). According to this study, “[o]nly a handful (1%) of the nearly 2 000 children studied across their childhoods had not been exposed to severe forms of violence at some point in their lives” (:n.p.). Large numbers of children are affected by violence. The report (Mathews 2018) stated:

[t]wo thirds of parents report that they regularly beat their 4-5-year-olds with sticks, belts, straps and shoes. More than 80% of children in their primary school years, and more than 90% during their secondary school years report being a victim of violence at home, school, in their community, or in their intimate relationships ... Violence is concentrated in the lives of mainly poor Black children, where criminal, community and school violence spills into their homes and leaks into their close relationships. (:n.p.)

Children growing up in chronic violent circumstances, according to the report (Matthews 2018) mentioned above,

are ... at risk of becoming desensitised to violence, uncaring towards others and potentially violent themselves. In fact, the study points to already high levels of violent behaviour, with more than two thirds of school-aged in the study reporting that they themselves have behaved violently towards others ... (:n.p.)

This study further highlights that when children are physically punished, “most children ... experience increasing stress and helplessness. This can lead to poor mental health, impaired social relationships and substance abuse, with implications for their educational progression, work productivity and social stability” (Matthews 2018:n.p.). Therefore, according to Mathews (n.p.), it is essential to reduce “children’s experience of and exposure to violence ... to prevent the long-term negative consequences for children growing up in South Africa’s townships.” Louise Laskey (2015), lecturer in the Faculty of Education at the Deakin University, Australia, states in this regard that

[h]arsh punishment has been found to negatively affect children’s emotional and language development, academic progress and parental attachment. Disruptive, anti-social behaviour may result ... Reviews considering long-term outcomes typically

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identify mental health issues such as internalising problems (like depression), or externalising problems (like aggression), and increased vulnerability to substance and alcohol abuse in adolescence and adulthood ... There are also concerns about cognitive impacts due to the potential stress and trauma involved. (:n.p.)

Bernadette Saunders and Bronwyn Naylor (2012:n.p.) confirm this by referring to a study authored by Tracie Afifi and her colleagues who “investigated the link between children being hit, pushed and shoved, and the development of psychological problems later in life. They found that harsh physical punishment was associated with depression, anxiety, substance abuse and personality disorders.” Afifi (2012:n.p.) and her fellow researchers go so far as to argue that “reducing physical punishment may help decrease the prevalence of mental disorders in the general population.”

Mathews (in Brümmer 2019:n.p.) argues that their research shows that if children receive corporal punishment, especially from a young age, they cannot distinguish between what is loving and what is not loving. And when you hit a child, they consider it a normal reaction if you don’t like someone’s behaviour. They are, therefore, more likely to act aggressively towards their peers from a young age. Children who experience violence at home become aggressive. According to her, it is crucial that the cycle of violence in a country like South Africa should be broken. Researchers know there is an intergenerational cycle of violence and that the parallels must be drawn between what children experience early in their lives and how it later affects them in terms of who they become. If we want to change behaviour, we must start at home. We all have a responsibility to think about how we can reduce the levels of violence ourselves (Brümmer 2019:n.p.).

Mathews further reasons that we know corporal punishment leads to immediate response. If you hit a child on his hand if he did something wrong or naughty, he’ll probably stop it immediately. But it will only have short-term results. This kind of action does not teach children why this behaviour was dangerous or why you didn’t

want them to act like that. This is confirmed by Laskey (2015:n.p.), stating: “Perhaps the most seductive aspect of the traditional method is that it has an instantaneous effect of discouraging undesirable behaviour. Not only that, but it can have a cathartic effect on the frustrated, stressed parent.” Furthermore, according to Saunders and Naylor (2012:n.p.), “many parents admit that they resort to hitting their children when they are tired, angry or distressed, and that they later feel regret and remorse.” Parents may even apologise to their children. “However, change over the longer term is entirely another matter. Research does not support the efficacy of physical punishment in achieving lasting behavioural change” (Laskey 2015:n.p.). It seems thus, that corporate punishment is used by parents to vent their own discomfort and emotions, the shame and perhaps aggression they experience themselves about their children’s behaviour, rather than to effect long-lasting behaviour change in their children. If that is the case, then it is not even corporal punishment but abuse, even if it is just a ‘light’ spanking.

Many parents say, in light of the abovementioned judgment by the Constitutional Court regarding corporal punishment, that it takes away their control, and that they do not know what to do. According to Mathews (in Brümmer 2019:n.p.), it should not be about exercising control, but rather about building better, positive relationships with your child. Most child abuse happens in the context of wrong forms of discipline. Mathews (in Brümmer 2019:n.p.) further states that she has never come across an extensive peer reviewed study in favour of corporal punishment. Furthermore, using religion to justify corporal punishment is wrong. She thinks we have advanced enough in our thinking about human rights. We all have our own forms of religion – but we are now living in the year 2020, the Bible was written centuries ago and we need to start thinking differently about what the Bible’s message means in our contemporary context with our unique challenges (Brümmer 2019:n.p.).

ROLE OF THE CHURCH

Jones (2019:4) emphasises that churches are the institutions most trusted by South Africans, therefore, it is possible for faith groups to make a big difference to the problematic culture surrounding discipline and corporal punishment in South Africa. In 2017, an Ipsos Mori poll (Ipsos 2017:n.p.) confirmed this view of the church with its finding that 88% of South Africans indicated that religion or faith is an important part of their lives. When you take this into account, you realise what a huge impact religious leaders and believers can make through spiritual capital at individual levels, in terms of stopping corporal punishment and violence against children. It can also be done in families, communities, institutions and the wider community. Unfortunately, this does not happen (effectively) when you look at the violence statistics of our country (:14).

Statements, like the following, especially coming from FOR SA (Brümmer 2019:n.p.) in light of the decision of the Constitutional Court regarding corporal punishment, that loving God-fearing parents will now have to go to jail for punishing their children, certainly do not help us in this regard. Continuous awareness should be raised about the negative effects of corporal punishment, and religious and cultural attitudes will have to be changed to ensure that discipline is administered in a manner consistent with children's dignity and their other human rights. The right to dignity indeed "means that children are independent and autonomous right-holders who may not be subjected to shameful and undignified treatment" (Landmark moment for child rights in South Africa 2019:n.p.).

In the current situation in South Africa, churches should play a more active role in advocating against the use of corporal punishment in homes and schools by teaching their members to interpret the Biblical verses allegedly justifying corporal punishment, in a more responsible way, in and for our South African context. Verses from the book of Proverbs (e.g. 13:24a; 19:18; 22:15; 23:13–14; 29:15 & 17) are regularly cited as justification for corporal punishment (cf. *Christian Education SA*

v Minister of Education 2000 (4) SA 757 (CC):3-4). Although “the act–consequence relationship” (von Rad 1972), expressed in retributive rhetoric (Sandoval 2013:102), is present in Proverbs, we should be very careful of a simplistic reading of these texts from an ancient cultural context as if they are literally applicable today. Proverbs is not a simple promise of “good things to those who pursue wisdom’s way and bad things to those who stray onto folly’s path” (:102). This simplistic reading should be countered by teaching people to read these verses about discipline in the light of the prologue of Proverbs with its emphasis on “righteousness, justice, and equity” (Pr 1:3) and that the beginning of wisdom and living a wisely life begins with the fear of the Lord (Pr 17).

A better understanding of the Hebrew words related to discipline, the verb ‘*yāsār*’ and the noun ‘*mūsār*’ should also be considered. These words are used in a variety of ways in Proverbs and can express different sides of the concept ‘discipline’: chastisement, correction, instruction, wisdom (Branson & Botterweck 1990:127-128; Fox 2008:n.p.; Sæbø 1997:714-715; Von Rad 1975:53). Although the use of *mūsār* with rod (Pr 13:24; 22:15; 23:13-14; 29:15) can indicate that physical methods were used to discipline children (Sæbø 1997:715), we should take the fact that the rod was used in the Bible for different tasks into consideration more seriously. It seems that a rod’s function in the Old Testament was mostly to protect, to support, to help, and not to inflict physical pain (cf. ed. Youngblood 2014:989; cf. Brady 2000:1134). According to Brown (2008:72), in not one of the proverbs is the language of punishment present. The use of the rod is not penalty or punishment or punitive. “Hence, ‘corporal punishment’ does not technically apply in Proverbs ... Retaliation, even retribution, does not figure in the act of discipline. ‘Rod and reproof yield wisdom’ (29:15a).” (:72).

The use of the rod “is meant to edify, that is, to save the child from, literally, grave danger. Love, not anger, is the fundamental reason or motivation” (Brown 2008:71). Actually, Proverbs 19:19 prohibits using discipline out of anger and the loss of control. In Proverbs, anger is seen as “a violent emotion, likened to a flood (27:4) that destroys

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relationships (22:19)” (:72). Therefore, in Proverbs, a clear preference for verbal discipline rather than using the rod for physical discipline is expressed: “A rebuke strikes deeper into an intelligent person than a hundred blows into a fool” (Pr 17:10). “Reproof or rebuke in Proverbs is to be equated not with mere scolding or harsh denunciation but rather with convictive, cajoling, urgent words of wisdom ... The word, thus is mightier than the rod” (:76-77). Words, and only words, expressing care and love, is the medium of discipline. Brown (2008:77) states that “[i]n Proverbs 1–9, the rebuke has replaced the rod.”

In light of the above remarks, it is difficult to justify the use of the rod for disciplining children in our time. The “misuse” of these texts as if they still literally apply today, can easily leave children voiceless (Jones 2019:14). As South Africa is seen as a pathfinder country in fighting violence against children, the churches in South Africa should urgently work together to change the culture surrounding discipline in our country.

SOUTH AFRICA RECKONED AS A PATHFINDER COUNTRY IN FIGHTING VIOLENCE AGAINST CHILDREN

On 18 September 2019, as already indicated, the South African Constitutional Court ruled that the “common law defence of ‘reasonable and moderate chastisement’ is unconstitutional under articles 10 and 12(1)(c) of the Constitution”⁵ (Global initiative to end all corporal punishment of children 2019a:1). Previously, common law acknowledged parent’s “power ‘to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction

5 18 September 2019, *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others*, Constitutional Court, ZACC34; confirming 19 October 2017, *YG v. The State*, High Court of Gauteng Local Division, Case No. A263/2016.

and admonition”⁶ (:1). In their report, the Global Initiative to end all corporal punishment of children states that “under South Africa’s common law system, this decision from the Constitutional Court is equivalent to repealing the defence in legislation. With this decision, the Court effectively banned the use of all corporal punishment in the home, as criminal provisions against assault now apply equally to children” (:1). According to this initiative South Africa is a “pathfinder country with the Global Partnership to End Violence Against Children, which commits it to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals” (:2).⁷ This prohibition by the Constitutional Court includes all settings, implying the home, and alternative settings, such as day care, schools, and penal institutions (:2-4). According to the Global Initiative to end all corporal punishment of children (2019b),

only 12% of the world’s children are fully protected in law from all corporal punishment ... [g]overnments of 87 states have not yet made a public commitment to law reform ... and in 67 states, corporal punishment has not been fully prohibited in schools ... 58 states have now achieved prohibition in all settings, including the home. 54 more states have committed to reforming their laws to achieve a complete legal ban ... In 32 states, corporal punishment – whipping, flogging, caning – is still lawful under state, traditional and/or religious law as a sentence for crimes committed by juveniles. In 17 states, corporal punishment is not fully prohibited in any setting, including as a sentence for crime. (:n.p.)

6 R v Janke and Janke 1913 TPD 382.

7 Various forms of violence against children persist. In 83 countries (mostly from developing regions) with recent data on the subject, nearly 8 in 10 children from 1 to 14 years of age were subjected to some form of psychological aggression and/or physical punishment at home. In all but seven of these countries, at least half of children experienced violent disciplinary methods. Sexual violence is perhaps the most disturbing of children’s rights violations. Based on the limited data available, in 14 of 46 countries with comparable data, at least 5 per cent of women between the ages of 18 and 29 experienced sexual intercourse or other sexual acts that were forced, physically or in other ways, for the first time before they were 18 years of age.

As a pathfinder country, we have to find answers on what the best ways are to discipline children in order to live wisely.

SEEKING BETTER WAYS TO DISCIPLINE CHILDREN IN ORDER TO LIVE WISELY

It is not so easy to develop new discipline strategies that are effective. It is quite a complex challenge to accomplish such a goal. What always makes it difficult is “the broad scope of what constitutes discipline and the multifactorial etiology of behavior problems” (Howard 1996:809). Therefore, it is essential that the whole South African society should together seek for these better ways. Together we have to develop a new culture regarding discipline and violence, in general, in this country. This new culture should be developed in both our homes and schools, and in broader society. Parents and teachers should work together on this. One of our first challenges is to establish a mutual understanding of what discipline is. Your discipline strategy always flow from your view of what discipline means. Only if we can create a broader consensus on our understanding of the concept of discipline, can we really work on applying such an understanding in our different contexts. There are some general principles applicable to both the home and the school contexts, but there are also different challenges present in each of these contexts. These different challenges can only be addressed effectively if educators, parents and children can find mutual ground around what discipline really is. Is this a farfetched dream, or can it be achieved by starting more open conversations about discipline in our local communities, schools and families?

According to Lewis and Short’s *Latin Dictionary*. Founded on Andrew’s edition of Freund’s *Latin Dictionary* (in Reyneke 2012:2; cf. Reyneke 2013:42-43) our word discipline originates from the Latin word *disciplina* meaning: “instruction, tuition, teaching in the widest sense of the word ... are the objects of instruction ... Subject: a custom, habit.” In her (Reyneke 2013:43) discussion of related Latin

words derived from the concept '*disciplina*', it is clear that 'instruction', 'teaching', 'learning' and 'learner' are the focus of this concept. What is interesting, is that there is no reference to discipline as punishment.

In a study on the classical approaches to discipline in the Athenian, the Roman and Christian traditions, Oosthuizen, Roux and Van der Walt (2003) confirm the above views. They draw the following conclusion:

The notion of punishment, chastisement, retribution or justice does not appear in any of the Greek words discussed ... (although *paideia* implies a degree of chastisement, if and when necessary). It also does not form part of the meaning of the Latin roots of the word "discipline" or "disciple". (p. 387)

In a discussion on the root and meanings of *discipline*, the Merriam-Webster online dictionary (n.d.) indicates that the reference to discipline as punishment was actually a fairly late evolvement in the development and understanding of this concept. The dictionary states:

Discipline comes from *discipulus*, the Latin word for *pupil*, which also provided the source of the word *disciple* (albeit by way of a Late Latin sense-shift to "a follower of Jesus Christ in his lifetime"). Given that several meanings of *discipline* deal with study, governing one's behavior, and instruction, one might assume that the word's first meaning in English had to do with education. In fact, the earliest known use of *discipline* appears to be punishment-related; it first was used in the 13th century to refer to chastisement of a religious nature, such as *self-flagellation*. (n.p.)

Brendtro, Brokenleg and Van Bockern (1990:82) confirm this view. According to them the original concept was the "purest form of discipline", meaning the adult provided guidance through teaching to the young. Over time, this understanding mutated up to the point that

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many dictionaries now indicate ‘punishment’ as synonymous with discipline. They opined:

The joining of discipline with punishment creates a psychological oxymoron. ... Discipline is a process of teaching, not of coercion. It seeks to involve youth in learning social responsibility and self control. Discipline is impeded by the unilateral exercise of adult authority and control. (p. 82)

In summary, it can be stated that discipline is not about punishment to establish an adult’s control and authority over children, but rather instruction in which knowledge and skills are transferred and children are also helped to attain self-control and self-discipline. “This entails guiding them on the right way, correcting inappropriate behaviour in a loving and caring way, and warning and supporting learners where necessary” (Oosthuizen, Roux & Van der Walt 2003:44). The task of the educator is to build a good relationship with every pupil, as well as creating an environment which will enhance teaching and learning and enable children to achieve the realisation of their full potential. To achieve these goals, it is important to take cognisance of and apply the following differences which Le Motte (in Reyneke 2012:3) makes between discipline and punishment:

- Discipline is intrinsic, while punishment is external.
- Discipline is educative, while punishment is punitive.
- Discipline is about self-control for the sake of self-actualisation, while punishment is the exercise of control over people for the sake of compliance.

In the light of the above basic understanding of the concept of discipline, the focus can now turn to discipline in the contexts of the school and the home.

DISCIPLINE IN OUR SCHOOLS

After the use of corporal punishment in schools in South Africa was outlawed by legislation, the Department of Education (2000) introduced alternatives to corporal punishment (ATCP) which can be employed in classrooms. These alternatives are based on the principals of Positive Discipline which want to enhance non-violent measures of discipline. The question to ask is: Does ATCP work?

Already in 2007, Badenhorst, Steyn and Beukes (2007:302) expressed the opinion that “[t]he apparent inability of many educators to manage learner behaviour is cumbersome. They seemingly lack the skills to bridge the gap between reactive and pro-active discipline ...” Since then, various researchers have expressed their concern about the disciplinary situation in South African schools and teacher’s struggle to survive in these circumstances. Joubert and Serakwane (2009:126) found that “some of these [new] methods are perceived to be ineffective by the majority of educators and they battle to find alternatives that works” (:129). With their study on disruptive behaviour in the Foundation Phase of schooling, Marais and Meier (2010:41) confirm this view that teachers find it hard to uphold discipline in the classroom and that learners keep on with disruptive behaviour. Increasing cases of learner indiscipline after the introduction of ATCP in 2000, suggest that teachers are not capable of effectively implementing these substituting disciplinary measures (Maphosa & Shumba 2010:387).

In a study on the relationship between school discipline and the legislative banning of corporal punishment, Ntuli and Machaisa (2014:1781) came to the conclusion that the result was “indeed a decline in the level of discipline in schools.” They also state: “One of the key findings of this research is that educators and principals find it difficult to apply the alternative” (:1788). This maybe a reason why some educators still persist in using corporal punishment (cf. The current situation above) or are pressing for bringing it back, at least as an option. Although Marumo and Zulu (2019:46) found in their study on the perceptions of teachers and learners on alternatives to corporal punishment that “some teachers and learners felt that alternative

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forms of discipline were effective to a certain extent, the general perception was one of scepticism.” They also draw the conclusion that “[b]oth teachers and learners expressed the need for a return to corporal punishment in cases of serious misconduct” (:46). Marumo & Zulu (2019:61) is of the opinion that “[t]he majority of calls for the reintroduction of corporal punishment stemmed from desperation on the part of teachers as a result of their inability to handle ‘out of control’ learners.” During their research, one teacher commented: “Corporal punishment should be re-introduced in order to curb ill-disciplined behaviour by learners” (:61).

How did this situation develop? Many answers can be given to this question. One of the answers which are regularly given is that educators was not properly prepared and trained for the changed situation and how to apply ATCP effectively, and still do not receive enough training in this regard (Joubert & Serakwane; 2009; Busienei 2012; Ntuli & Machaisa 2014; Mulaudzi & Mudzielwana 2016; Marumo & Zulu 2019). This led to a lack of knowledge, skills and motivation to apply ATCP among teachers. Related to this reason, is the claim by teachers “that they were never consulted on their views when the strategy was initiated and this could be a contributing factor to the continuous use of corporal punishment and the partial or non-use of ATCP” (Moyo, Khewu & Bayaga 2014:9). Joubert and Serakwane (2009:130) indicated that “[i]t is important to note that strategies that are employed by educators to establish discipline in the classroom will be based on the knowledge, skills, attitude and values they acquire in one way or another.” It seems, thus, as if the planning and implementation of ATCP was done haphazardly and that not enough attention was given to these important factors. If people are not consulted and not trained, they will not buy into a new strategy, nor adhere to it. In such a scenario, it will be very difficult to change a school’s disciplinary strategy and culture. The disturbing result was that many educators and schools could not cross the bridge from reactive to proactive discipline with positive-orientated measures (Badenhorst et al. 2007:306).

Although other factors also played a role in creating the situation where ATCP is not working effectively in many schools, it will not be discussed here because it does not change the fundamental questions to be asked: Is ATCP a suitable strategy for inculcating discipline in schools? (Moyo et al. 2014:3). The more probing question is: What is the theoretical basis and values of ATCP?

In answering these questions, it can be helpful to identify the disciplinary method that is used by educators in the place of corporal punishment. Some of these methods are: verbal warnings, written warnings, demerits, time-out, small tasks like tidying the classrooms, giving learners extra work, exclusion from certain activities, detention and suspension from school. In their research amongst teachers from 335 schools, Lessing and de Witt (2011:413) found that detention was the most used disciplinary method, used by 44.9% of the respondents. What was especially worrisome for them was that only 0.7% of the respondents referred to the importance of a value system in the punishment process (:413). Although Lessing and de Witt are positive about the movement to ATCP and away from viewing discipline as punishment, it is a bit ironic that they still use vocabulary of the old dispensation in their article, Afrikaans words referring to punishment (straf), for instance, 'strafproses' (punishment process), 'strafmaatreëls' (punishment measures) and 'strafmetodes' (punishment methods). To change a culturally embedded system, the change of language plays a very important role and should get more attention in our discussions about discipline.

From the above, it is clear that many teachers are still working with an authoritative mindset, control orientated, re-active, with punitive measures, retributive, and with no clear distinction between discipline and punishment. It seems that in order to counter this situation, a new approach to discipline has to be developed and implemented. In this regard, Reyneke made a very important contribution with her work on a restorative approach to discipline (cf. Reyneke 2012, 2013, 2016, with R Reyneke 2020). Reyneke and Reyneke (2020) declare about restorative approach to discipline:

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to implement this approach, a complete mind-shift is required. This mind set requires an understanding that to discipline learners is to teach socially acceptable behaviour. The restorative approach entails moving away from an approach that merely focuses on the ill-disciplined learner to an approach that focuses on preventing disciplinary problems, changing the culture of the school and restoring the harm done to those affected by the misconduct. The restorative approach involves focusing on finding solutions to address the needs and interests of all the role-players in the school community, rather than finding suitable punishments. Thus, focusing on the best interests of every learner and the interests of educators. Restorative discipline is a value-driven approach that respects the human rights of every stakeholder and also protects, promotes and fulfils everyone's human rights. (back end of book)

This approach is in line with the understanding of the concept of discipline stated above. Although it will not be easy, with this approach, a new culture regarding discipline can be built in South Africa, which will enhance the best interests, not only of children, but also of all citizens of South Africa. But to build this new culture, it is of the utmost importance that parents should also implement this new approach in disciplining the children in their homes.

DISCIPLINE IN OUR HOMES

According to Saunders and Naylor (2012:n.p.)

[m]ost parents love their children and want to be the best parents that they can be. Children are more likely to respect parents who treat them with respect and teach them constructive ways to behave. Children thrive on positive recognition that motivates the repetition of behaviours parents want to see, and also enhances children's self-esteem.

A joint press release by respondents and amici curiae in the case of *Freedom of Religion South Africa v Minister of Justice & Constitutional Development & others* [Children's Institute (UCT); Quaker Peace Centre; Sonke Gender Justice; Centre for Child Law; The Parent Centre; Global Initiative to End All Forms of Corporal Punishment of Children; Dullah Omar Institute for Constitutional Law, Governance and Human Rights], states that the "court's approach to parents' entitlement to chastise their child was guided by the best interests of the child in respect of protection from potential abuse" indicating that the best "interests of the child would be to achieve discipline and achieve the same result without causing harm or unduly undermining the fundamental rights of the child" (Sonke Gender Justice 2018:n.p.). Furthermore, the court "also found that reasonable chastisement was neither necessary nor justifiable in light of the fact that there are non-violent methods for disciplining children such as 'positive parenting'" (:n.p.). Marta Santos Pais (in Saunders & Naylor 2012:n.p.), a Portuguese lawyer who served as Special Representative of the United Nations Secretary-General on Violence against Children from September 2009 until May 2019, said: "Legislation provides an ethical and normative framework to promote values of respect, tolerance and human rights."

Rightly so, Laskey asks (2015:n.p.): "So how do you then make your children behave?" She then refers to the following alternative techniques to discourage misbehaviour: "providing consequences; withdrawal of privileges; exclusion (time out) or quiet time; setting and enforcing boundaries; [and] saying 'no' firmly but avoiding hostility" (:n.p.). According to her, desirable behaviour over the longer term depends on the quality of our relationships. Research and practice confirm, according to Laskey, that positive outcomes can be enhanced by the following:

- spending focused time together in activities of the child's choosing, while demonstrating patience, support and warmth;
- educating ourselves about appropriate expectations (in line with the child's level of development). For example,

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aggression in toddlers is normal (peaking at 24-42 months). A child's ability to concentrate when following adult-directed activities can be estimated at 3 minutes per year of age (4 years x 3 = 12 minutes);

- being warm, affectionate, consistent and encouraging with children;
- minimising the need for discipline with preventive strategies. Provide a high-interest novel toy on occasions where coping with the environment will be challenging (such as aeroplane travel) or plan brief excursions to retail environments when the child is neither fatigued nor irritable, involving the child in the experience. This could be finding and placing suitable objects in the shopping trolley. If the children feel involved, they are less likely to lose interest and act out;
- providing appropriate, active supervision and involvement in activities (avoiding distractions of technology such as mobile phones so the parent is completely available);
- explaining why certain behaviours are inappropriate, including their impact on others;
- teaching empathy by supporting children in identifying emotions and responding sensitively;
- offering choices – for example, letting the child choose what colour they would like to wear (but not presenting 'not wearing a hat' as an option);
- modelling appropriate behaviours and responses, providing support and guidance (alternative strategies) when frustration occurs;

- redirecting the young child to other activities when tensions arise; [and]
- developing rules appropriate to children's developmental level. (:n.p.)

The challenge for parents remains that we “teach children internalised self-regulation, ethical choices and consideration for others, and ultimately, to interrupt the generational cycle of violence in child discipline” (Laskey 2015:n.p.).

CLOSING REMARKS

According to the joint press release, as referred to earlier, by respondents and *amici curiae* in the case of *Freedom of Religion South Africa v Minister of Justice & Constitutional Development & others*, “[c]orporal punishment is one of the key drivers of the high levels of violence against children in South Africa” (Sonke Gender Justice 2018:n.p.). They refer to the Constitutional Court that “acknowledged the intergenerational cycle of violence” by stating: “[w]e have a painful and shameful history of widespread and institutionalised violence” (:n.p.). Furthermore,

violence against women and children are inextricably linked. They occur in the same households and share the same drivers. With the current attention to the high levels of gender-based violence in South Africa, it is important to note that this ruling is not aimed at criminalising parents. This is only the first step in protecting children more from physical violence in the home. The real work begins now. Raising public awareness on the ruling is accompanied by momentum from the Department of Social Development to drive a national parental awareness campaign on Positive discipline. Positive discipline is not an alternative form of punishment: it avoids the use of punishment. Instead, it assumes that children want to behave well but need

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help understanding how to do so and that children learn best through cooperation. (:n.p.)

South Africa must also concentrate on introducing wide-ranging programmes to support families and teachers at national level to alter attitudes and behaviours that promote the use of harsh and abusive forms of discipline against children. We need programmes that have proved effective in “changing both individual attitudes and social norms around child discipline and we need to teach caregivers alternative, non-violent forms of discipline that can replace smacking and spanking” (Sonke Gender Justice 2018:n.p.).

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CHAPTER 4

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